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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
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1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996.	))))	MM Docket No. 98-35

REPLY COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

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SUMMARY

The overwhelming majority of the parties commenting in this proceeding agree that the Commission's twenty-three year old ban on newspaper/broadcast cross-ownership is not necessary in the public interest. The opening comments demonstrate not only that the newspaper/broadcast ban is not needed to foster diversity or to promote competition in the information marketplace of the late 1990s, but also that the prohibition harms the public interest by unjustly and illogically discriminating against newspaper publishers.

Indeed, as was the case in 1975 -- when the newspaper/broadcast rule was first adopted -- the evidence in this proceeding shows that newspaper-owned broadcast stations generally provide more local news and better public service programming than their independently owned rivals. Moreover, it is clear that daily newspapers -- with their extensive reporting resources, journalistic expertise, access to capital, and community ties -- are ideal candidates to join with broadcasters to provide innovative new information services and media outlets. Thus, repeal of the newspaper/broadcast cross-ownership prohibition would facilitate improvements in local broadcast programming and help speed the further development of alternative information sources, thereby more effectively fulfilling the agency's public interest mandate.

The handful of commenters advocating retention of the rule provide no reliable evidence to support their position that eliminating the newspaper/broadcast cross-ownership rule would harm diversity or competition in the media marketplace. The speculative concerns raised by these few commenters are refuted, moreover, by extensive evidence showing that the marketplace on its own fosters viewpoint diversity and that newspaper publishing and broadcasting are fundamentally distinct businesses characterized by separate operations and

independent editorial control. In any event, the Commission itself repeatedly has recognized that common ownership of media outlets produces incentives to diversify programming content in order to appeal to the largest aggregate audience.

Similarly, the bald assertions of one commenter regarding market dominance by daily newspapers are discredited by the detailed factual record demonstrating that the local advertising marketplace is intensely competitive. The evidence conclusively shows that daily newspapers and broadcast stations face significant competition from a vast array of competing media, thereby eliminating any realistic prospect of market dominance by newspapers or broadcast stations.

Moreover, the generalized concerns of a handful of commenters about diversity of ownership are insufficient to justify a discriminatory prohibition of newspaper entry into local broadcast station ownership. Indeed, no evidence has been offered to establish the existence of a clear nexus between ownership diversity and content diversity, nor to demonstrate that permitting newspaper/broadcast combinations would have any appreciable impact on ownership opportunities for women or minorities.

Finally, and perhaps most significantly, those commenters in favor of maintaining the newspaper/broadcast cross-ownership rule fail to acknowledge that the statutory mandate for this proceeding -- as well as controlling principles of administrative and First Amendment law -- places the burden squarely on the FCC to justify the continued existence of this anachronistic prohibition. Because there is no relevant, probative evidence on the record demonstrating that the newspaper/broadcast restriction is necessary to serve a clearly articulated public interest objective, the FCC is obligated to initiate a rulemaking promptly to repeal this outdated and counterproductive government regulation.

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REPLY COMMENTS OF THE NEWSPAPER ASSOCIATION OF AMERICA

I. INTRODUCTION

The Newspaper Association of America ("NAA") hereby replies to the opening comments submitted in response to the Commission's March 13, 1998 Notice of Inquiry in the above-captioned proceeding.[1] As demonstrated herein, dozens of parties already have filed comments in this proceeding, and the overwhelming weight of the evidence confirms that the outdated newspaper/broadcast cross-ownership ban is wholly unnecessary in the abundantly diverse and competitive contemporary information marketplace.

Indeed, the rule unfairly discriminates against the very parties most likely and best qualified to increase the quantity and improve the quality of news and public service program offerings of local broadcast stations. Further, the prohibition frustrates the ability of newspaper publishers and broadcasters to take advantage of economies of scale and efficiencies

[1] 1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules, MM Docket No. 98-35, FCC 98-37 (rel. Mar. 13, 1998) ("Notice of Inquiry").

of joint operations to develop new and innovative information services and media outlets. Based upon the ample and essentially uncontradicted record evidence advanced in the opening round of comments, the Commission is compelled, consistent with its Congressional mandate and controlling principles of administrative law and constitutional jurisprudence, to move forward promptly with rulemaking proceedings to eliminate the newspaper/broadcast cross-ownership ban.

II. THE OPENING COMMENTS IN THIS PROCEEDING REFLECT BROAD SUPPORT FOR THE REPEAL OF THE OUTDATED AND COUNTERPRODUCTIVE NEWSPAPER/BROADCAST CROSS-OWNERSHIP LIMITATIONS.

The record before the Commission on the newspaper/broadcast cross-ownership rule is now fully developed. In addition to the evidence advanced in its April 28, 1997 Petition for Rulemaking, NAA as well as dozens of other parties in their opening comments have demonstrated beyond any doubt that the FCC's rule prohibiting daily newspapers from operating broadcast outlets in their local communities does not serve, and in fact is harmful to, the public interest.

A. The Overwhelming Weight of the Opening Comments Demonstrates That The Outdated Rule Is Unnecessary and Counterproductive In Today's Highly Diverse and Competitive Information Marketplace.

The comments urging repeal of the newspaper/broadcast rule shared several key themes and conclusively established that:

- The marketplace for news, information, and entertainment is vastly more diverse and competitive than in 1975, eviscerating the scarcity rationale previously employed to justify intrusive governmental oversight of broadcasting and eliminating any legitimate concerns with respect to programming or viewpoint diversity;[2]

- Daily newspapers and broadcast stations face extensive competition from weekly newspapers, direct mail, yellow pages, outdoor advertising, magazines, cable operators, and other locally oriented advertising vehicles, and no broadcast/newspaper combination is likely to have the potential to exercise market power;[3]

- As the Commission has determined in numerous other proceedings eliminating or relaxing outdated multiple-ownership restrictions, common ownership of media outlets fosters diversity in content and enhances programming in the public interest;[4]

- Commonly-owned newspapers and broadcast stations typically maintain separate news and editorial staffs, enjoy operational independence, and compete vigorously with each other as well as with the extensive array of independently owned media outlets in the local marketplace;[5] and

- Co-owners tend to provide more and better local news and public affairs programming and often create "value added" services and new information products that would, in the absence of joint ownership, be too expensive to provide.[6]

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[2] See, e.g., NAA Comments at 31-55; Assoc. of Local Television Stations ("ALTV") Comments at 31-33; Cox Broadcasting, Inc. and Media General, Inc. ("Cox/Media General") Comments at 6-12; Gannett Company, Inc. Comments at 12-16; The Hearst Corporation Comments at 10-15; Media Institute Comments at 8, 14; National Association of Broadcasters ("NAB") Comments at 4, app. A; Tribune Company Comments at 22-51.

[3] See, e.g., NAA Comments at 74-82, app. B; A. H. Belo Corporation ("Belo") Comments at 29-32; Gannett Comments at 7, 11-17, 24; Hearst Comments 17-19; Media Institute Comments at 2-3.

[4] See, e.g., NAA Comments at 55-59; ALTV Comments at 34-36; The Chronicle Publishing Company Comments at 13-25; Cox/Media General Comments at 9-12; Gannett Comments at 27-28, app. B; Media Institute Comments at 5-6; NAB Comments at 8-11, app. B; Tribune Comments at 9-13.

[5] See, e.g., NAA Comments at 60-65; Belo Comments at 20-22; Chronicle Comments at 16-20; Gannett Comments at app. A; Lee Enterprises Comments at 4-5; NAB Comments 8-11, app. B; Tribune Comments at 28-51.

[6] See, e.g., NAA Comments at 60-65; Belo Comments at 15-20; Chronicle Comments at 16-25, Exh. B; Gannett Comments at 27-32; Hearst Comments at 15-16, 19-22; Media

(Continued...)

In short, the Commission has been presented with a mountain of concrete and reliable evidence showing that the rule is not needed to foster diversity or promote competition in today's media marketplace. On the contrary, the antiquated ownership restriction serves only to prevent newspaper publishers from utilizing their extensive news-gathering resources, journalistic expertise, and community ties to expand and improve broadcast coverage of local news and public affairs and to develop new and innovative information services and outlets.[7]

B. Repeal of the Prohibition Is Required To Satisfy the FCC's Congressional Mandate and To Comply with Controlling Principles of Reasoned Decisionmaking and First Amendment Law.

Virtually every other significant barrier to multiple ownership has been eliminated or substantially relaxed in recent years -- e.g., the one-to-a-market rule, the cable/telco cross-ownership ban, the local radio ownership rules, and the national radio and television ownership rules. In this regulatory environment, and in view of the record compiled in this proceeding, maintenance of the newspaper/broadcast cross-ownership limitation is discriminatory and unjustifiable. Indeed, it is clearly arbitrary and capricious for the Commission to continue to single out newspaper publishers as unqualified to own local broadcast outlets in an era when the FCC repeatedly has praised the diversity and public interest programming benefits that can be derived from joint ownership.

(...Continued)
Institute Comments at 15; Tribune Comments at 59-72.

[7] See generally Reply Statement of Lloyd G. Schermer, former Chief Executive Officer of Lee Enterprises, Inc. and former Chairman of the American Newspaper Publishers Association ("Schermer Reply Statement"), submitted concurrently herewith.

In the abundantly diverse mass media environment of the late 1990s, the Commission cannot continue to invoke the outdated scarcity rationale or reflexively recite a vague and unproven diversity objective to justify disparate treatment of one subset of the universe of competitive information providers. In view of the overwhelming record evidence developed in this proceeding, failure by the Commission to move forward promptly toward repeal of the prohibition would be an abuse of discretion and an impermissible burden on the First Amendment rights of publishers and broadcasters.

III. NONE OF THE COMMENTS SUPPORTING RETENTION OF THE RULE OFFERS ANY EMPIRICAL EVIDENCE THAT MAINTENANCE OF THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP PROHIBITION IS NECESSARY IN THE PUBLIC INTEREST.

The handful of comments urging retention of the newspaper/broadcast cross-ownership rule fail to recognize that the statutory mandate for this biennial review proceeding places the burden squarely on the Commission to justify keeping the ban. As NAA and other parties have shown, the clearcut Congressional directive in this proceeding requires the FCC to perform a searching analysis of the rule in light of competitive conditions in the marketplace and changes in the regulatory environment, and to repeal the rule if it is "no longer necessary in the public interest."[8] This obligation is buttressed by controlling administrative law precedent requiring an agency to reevaluate its regulations in light of changes in the factual premises that underlie them, and by recent judicial decisions addressing the First Amendment standards applicable to regulations aimed at the mass media, which unquestionably demand a

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[8] Communications Act of 1934, as amended, § 11, codified at 47 U.S.C. § 161(a)(2)-(b); see also NAA Comments at 4-7; Tribune Comments at 16-20.

far stronger evidentiary showing than has been or could be made to support such a draconian limitation on the rights of publishers and broadcasters.[9]

Under these standards, unless those who favor retaining the newspaper/broadcast restriction (and this would include the agency itself) supply relevant, probative evidence that the rule is essential to serve a substantial and clearly articulated public interest need, the Commission is obligated to commence a proceeding aimed at repealing the ban. The need to eliminate the rule is even more compelling in light of the overwhelming evidence now on the record to show not only that the restriction is unnecessary, but that abandoning it will further the public interest by enabling newspapers to enhance viewpoint diversity in broadcasting, increase the amount of locally-originated news and public affairs programming available to viewers and listeners, and develop innovative new information services and media outlets.

A. No Party Has Offered a Reasonable Explanation of How Maintenance of the Rule Benefits the Public Interest In Light of the Overwhelming Evidence That Newspaper-Owned Broadcast Operations Generally Provide More Local News and Better Public Affairs Programming Than Other Stations.

Given the strained reasoning originally used to justify adoption of the newspaper/broadcast rule in 1975, it is no surprise that the handful of commenting parties urging retention of the rule offer precious little evidence to bolster their position that the ban fosters more or better local public interest programming. Those that offer any specific factual support at all cite studies that tend to justify elimination of the rule entirely, and not its perpetuation. For example, the Center for Media Education, et al. ("CME"), in arguing

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[9] NAA Comments at 7-17; see also Cox/Media General Comments at 7-25; Media Institute Comments at 12; NAB Comments at 4-9; Tribune Comments at 20-22.

generally against relaxation of the ownership rules, relies on a Media Access Project/Benton Foundation study that found that "70 percent [of the commercial television stations studied] did not provide any local public affairs programming.[10] CME also complains that the public is "receiving less news and information programming from fewer sources."[11] Apart from the obvious incompleteness of a study that purports to examine local programming but excludes locally-originated newscasts, NAA submits that CME's data, if accurate, argue strongly in favor of eliminating the cross-ownership ban and allowing daily newspaper publishers to acquire co-located broadcast stations.[12]

Simply put, the best way to increase the amount and improve the quality of local news and public affairs broadcast programming is to open the broadcast market to daily newspapers. Particularly with respect to television news, where the start-up costs of implementing a new local newscast or developing original public affairs programming are enormous, newspapers, with their extensive local reporting resources, journalistic expertise, access to capital, and community ties, are ideal candidates to offer a new source for such locally-oriented broadcast

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[10] CME Comments at 17.

[11] Id. at 16.

[12] The MAP/Benton Foundation study is seriously flawed in that it only considered programs entirely devoted to "local issues of governance or civic affairs" as relevant to the issue of whether broadcasters provide local public affairs programming. See http://www.benton.org/Policy/TV/whatslocal.html. Most critically, the study did not count any locally-originated newscasts, despite the obvious fact that that today, the extended local newscasts aired by many television stations include regular segments specifically designed to raise awareness on issues of local concern. Contrary to the apparent preferences of the study's defenders, half-hour discussion programs are by no means the only appropriate vehicles for consideration of local issues.

programming.[13] Indeed, keeping the newspaper/broadcast rule in place, as The Chronicle Publishing Company explains, "prevents beneficial newspaper and broadcast combinations that could provide the public with more complete and innovative local news coverage and other forms of local content."[14]

Moreover, all of the available evidence on the record today -- as was the case when the Commission adopted the rule in 1975 -- shows that newspaper-owned stations and group-owned stations generally provide more news and other non-entertainment programming than their independently owned rivals.[15] Further, the National Association of Broadcasters ("NAB") commissioned a sophisticated economic analysis of the impact of the rule which concluded that "diversity could actually increase" if the newspaper/broadcast rule is eliminated because of the substantial economic efficiencies that would result from combined newspaper/broadcast operations.[16] Thus, based on its alleged concerns, CME (and the Commission) should embrace the prospect that elimination of the newspaper/broadcast ban will

[13] See Tribune Comments at 59-71.

[14] Chronicle Comments at 10.

[15] For example, A. H. Belo, owner of the grandfathered combination of The Dallas Morning News and WFAA-TV (along with five other daily newspapers and 16 other television stations), submitted a study showing that the great majority of its broadcast properties air an amount of non-entertainment programming that significantly exceeds the average amount of such programming aired by the other network affiliates in the same markets. See Belo Comments at app. A. Moreover, NAA submitted statements from other grandfathered combinations among its membership that confirmed that joint operators typically offer significantly more news than competing stations. NAA Comments at 62.

[16] See NAB Comments at 10, app. B.

afford newspaper publishers the opportunity to invest in and enhance local news and public affairs programming on co-located broadcast stations.

B. The Few Comments Arguing That New Technologies Do Not Contribute Substantially to the Abundance of Locally-Oriented News and Public Affairs Programming Provide No Evidence To Substantiate Their Claims and Ignore the Record To the Contrary.

CME and the Office of Communication, United Church of Christ, Inc., and Black Citizens for a Fair Media ("UCC/BCFM") also maintain that despite the phenomenal growth of alternative outlets for expression and dissemination of information, "new technologies" such as cable and the Internet do not justify the repeal of the newspaper/broadcast cross-ownership rule because they "do not generally provide original news or informational programming on local issues."[17] Of course, these comments cite no empirical evidence in support of their broad and conclusory assertions.[18] Indeed, as NAA and others have demonstrated in great detail, the mass media marketplace is remarkably diverse and has been transformed in ways unimaginable when the newspaper/broadcast rule was adopted in 1975. Nearly every information medium has experienced robust growth -- including substantial growth in the number of broadcast outlets, the increased contributions by weekly, "alternative newsweekly," and specialty newspapers, the explosive growth of cable and DBS as

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[17] CME Comments at 9; see also UCC/BCFM Comments at 3.

[18] CME also argues that because cable television, DBS, and Internet access are unaffordable to "many households" the Commission cannot consider these technologies as viable alternatives to broadcast services. CME Comments at 8. Of course, neither television receivers, radios, nor most daily newspapers are free -- and CME provides no data for the Commission to evaluate, much less substantiate, its claims that affordability should impact multiple ownership regulation.

competitive entrants in the market for delivered video programming, the maturation of broadcast radio with its emphasis on news and news/talk formats, and, of course, the recent evolution of the Internet as a two-way medium for the expansion of civic debate.

Moreover, the sweeping dismissal by CME and UCC/BCFM of so-called "new technologies" ignores the extensive showings made by NAA, Tribune, Chronicle, Cox/Media General, Belo, and many others who are utilizing alternative media outlets to offer enhanced, locally-originated news, public affairs, and other informational programming and content. Indeed, particularly in the case of cable television and the Internet, there is nothing from a technological standpoint that prevents these outlets from providing exactly the quantity and quality of local news and public affairs programming suitable for and desired by consumers in a given market.[19]

The comments show that joint owners of newspapers and broadcast outlets can best facilitate the development of innovative new media services -- particularly the Internet, which is a mixed print, audio, and video medium ideally suited to the journalistic expertise of a combined newspaper/broadcast operation.[20] Equally important, however, is the fact that via the Internet anyone, anywhere, can participate fully in the local media marketplace. Thus, if there is a need for enhanced locally-oriented content, or a pressing urgency for public debate

[19] For example, Chronicle, owner of the grandfathered combination of the San Francisco Chronicle and KRON-TV, has launched "BayTV," the only 24-hour cable local news channel in the San Francisco Bay area, to fill "a void in the market for community news." Chronicle Comments at 23-24. Likewise, A. H. Belo is using its broadcast and publishing news resources to expand its local news coverage via cable television. Belo operates three cable news channels and is preparing to launch a Texas-based statewide cable news channel next January. See Belo Comments at 12-13.

[20] Chronicle Comments at 14; NAA Comments at 65.

on a matter of local importance, the Internet can, and does, provide a medium for the message.[21]

The Independent Free Papers of America ("IFPA") suggests without support that the beneficial results of co-ownership could just as well "be achieved through joint ventures and other cooperative measures."[22] To the contrary, a comprehensive economic analysis of the efficiency benefits from newspaper/broadcast cross-ownership concludes that "the costs of creating and operating a joint venture between newspapers and broadcast entities are generally too high for separately owned entities to undertake the risk."[23] For those joint ventures that are launched, the divergent interests of the partners can thwart the most efficient development of the project.[24] As a result, the study concludes, joint ownership of media outlets by a single firm is superior to the option of establishing joint ventures.[25] Plainly, then, the best way for the Commission to foster the development of the Internet and other emerging media technologies as robust resources for locally-oriented public interest content is to eliminate the ban on newspaper/broadcast co-ownership.

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[21] See NAA Comments at 36-40.

[22] See IFPA Comments at 4.

[23] See Stanley M. Besen and Daniel P. O'Brien, An Economic Analysis of the Efficiency Benefits from Newspaper-Broadcast Station Cross-Ownership, at 6-8, attached as an Exhibit to Chronicle Comments and an Appendix to Gannett Comments.

[24] See id. at 16-21.

[25] See id. at 21-25; Chronicle Comments at 26.

C. CME's and UCC/BCFM's Speculative Concerns That Common Ownership Will Limit Viewpoint Diversity Are Belied By the Numerous Comments Demonstrating That Newspaper Publishing and Broadcasting Are Fundamentally Different Businesses Characterized By Separate Operations and Independent Editorial Control.

In its comments, CME makes the conclusory assertion that broadcast station ownership inevitably affects programming content and that "diversifying ownership is critical to diversifying the viewpoints available on broadcast stations."[26] Indeed, CME attempts to raise the spectre of undue influence on story selection and even censorship by media owners.[27] Similarly, UCC/BCFM asserts that "[w]hen a single corporation controls several media outlets in one community, none of those media outlets has an incentive to compete with or contradict the other's news coverage."[28] However, neither CME nor UCC/BCFM offers any reliable evidence to support its claims. Instead, the commenters rely on second-hand accounts of a few isolated incidents -- some of which do not even involve media in the United States -- and their own suppositions as to the reasons for news judgments or editorial decisions.

The overwhelming weight of the record evidence in this proceeding shows, however, that newspaper publishing and broadcasting are fundamentally different businesses with distinct characters and traditions. Joint owners of daily newspapers and broadcast stations, while perhaps sharing some resources and journalistic expertise, historically have maintained

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[26] CME Comments at 4.

[27] Id. at 6-7, 27.

[28] UCC/BCFM Comments at 2-3.

separate operations with independent editorial control.[29] Indeed, in the course of repealing or relaxing most of its other ownership restrictions over the past decade, the Commission itself repeatedly has found that common ownership carries with it incentives to diversify programming content in order to appeal to the tastes and interests of different segments of the audience.[30] Further, in the highly diverse and competitive information marketplace of the late 1990s, the outlets for news and opinion are so numerous and varied that audience members are virtually ensured access to a full range of viewpoints and opinions on any event or issue of significance.

In fact, much of the "evidence" cited by CME and UCC/BCFM in support of their broad and conclusory contentions serves to confirm that the information marketplace is working effectively to ensure a diversity of viewpoints. Thus, CME complains that "Donald Wildmon founded American Family Radio, a network of 156 stations serving 27 states, to 'use these radio stations to inform Christians about what is happening in America.'"[31] Similarly, CME points to Rupert Murdoch's establishment of the Fox News cable channel -- allegedly to present a conservative voice and serve as a "counterpoint" to the perceived liberalism of the rival Cable News Network.[32] NAA respectfully submits that the ability of such parties to find or create outlets for expression of alternative viewpoints serves as confirmation of the rich diversity of the information marketplace and the ready availability of vehicles for expression of

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[29] See NAA Comments at 60-65; see also Schermer Reply Statement at 3-4.

[30] See NAA Comments at 59-60.

[31] CME Comments at 4-5.

[32] Id.

a wide variety of viewpoints, rather than showing "scarcity" or homogeneity in that marketplace.

UCC/BCMF's argument concerning the Cincinnati Enquirer's coverage of Chiquita's business practices is equally unpersuasive.[33] According to UCC/BCFM's own account, numerous competing media addressed the matter -- in other words, the competitive information marketplace worked. The commenter's suggestion that common ownership of a newspaper and television station would deprive the residents of Cincinnati of the "necessary scrutiny to accurately inform citizens" on local issues is entirely speculative and unsupported. Again, as discussed above, the overwhelming weight of the evidence in this proceeding establishes that commonly-owned newspapers and broadcast stations maintain editorial independence and compete vigorously in news coverage. Moreover, an abundance of competing media exist on the local, regional, and national levels to ensure diverse coverage of any significant issue. In Cincinnati, for example, there are nine television stations,[34] dozens of radio stations,[35] and countless other media addressing local, regional, and national issues, eliminating the antiquated "city in a bottle" concern that the public could effectively be screened from opposing viewpoints, even on local issues, or denied access to the "truth."

The Commission clearly should not be in the position of attempting to second-guess news coverage decisions or police journalistic standards, either directly or indirectly. Nor should the agency premise the maintenance of an absolute ban on newspaper/broadcast cross-

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[33] See UCC/BCMF Comments at 7-8.

[34] Broadcasting & Cable Yearbook 1998 at B-163.

[35] Id. at D-336.

ownership on CME's or UCC/BCFM's speculative interpretations of the basis for news and editorial judgments in a handful of isolated situations, or their conclusory suggestions that maintenance of the newspaper/broadcast cross-ownership restriction is necessary to preserve viewpoint diversity or prevent undue influence by individual owners. The information marketplace has been shown to be fully capable of serving that function.

D. IFPA's Unsupported Concerns About Market Dominance By Daily Newspapers Are Refuted By the Extensive Record Evidence Demonstrating That the Local Advertising Marketplace Is Intensely Competitive.

IFPA asserts in its comments that daily newspapers dominate the local advertising market, and that "[c]ombining a daily newspaper's market power with either local radio or television would obviously reduce competition and increase prices."[36] In a similar vein, IFPA suggests that "[a]ny lessening of the cross-ownership rule would negatively impact every one of our members and any other independent free paper" and makes broad allusions to alleged but unspecified efforts by daily newspaper publishers to thwart competition.[37]

IFPA expressly acknowledges, however, that it is not aware of any evidence of anti-competitive practices by cross-owned stations and that the FCC did not develop such evidence at the time the rule was adopted.[38] Similarly, IFPA provides no reliable statistical or other evidence to support its claims of market dominance by daily newspapers.[39] The detailed

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[36] IFPA Comments at 3-4.

[37] Id. at i, 4.

[38] Id. at 1.

[39] Indeed, according to IFPA itself, "the total weekly circulation of local free

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factual record developed in the opening comments of NAA, NAB, and numerous other parties, however, demonstrates conclusively that daily newspapers and broadcast stations face intense competition from a vast array of competing media.[40] The existence of these alternative outlets for advertising provides ample protection against any prospect of market dominance by newspapers or broadcast stations.

In these circumstances, IFPA's undocumented concerns about the possibility of anti-competitive behavior certainly are not sufficient to justify perpetuation of a prohibition on cross-ownership of newspapers and broadcast stations. Further, as NAA and numerous others noted in their opening comments, to the extent any issue may arise in the context of a particular market or transaction, it can and should appropriately be addressed under existing antitrust standards by the Department of Justice or Federal Trade Commission.

E. In the Current Information Marketplace, Maintenance of the Archaic Cross-Ownership Prohibition Cannot Be Reconciled With the Commission's Mandate or the First Amendment.

Finally, UCC/BCFM, CME, and IFPA cavalierly dismiss the constitutional issues raised by maintenance of the newspaper/broadcast cross-ownership rule. UCC/BCFM, for example, asserts simply that the rule "is critical to protecting citizens' First Amendment rights."[41] Citing the Red Lion decision, UCC/BCFM contends that "[v]iewpoint-neutral

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community papers exceeds by 50% the entire circulation of all daily newspapers in the U.S." Id. at i. Thus, IFPA's own statements confirm that weeklies compete very vigorously with daily newspapers and broadcast stations.

[40] See, e.g., NAA Comments at 74-82.

[41] UCC/BCFM Comments at 6.

structural rules, such as the ownership rules under consideration in this proceeding, are the least intrusive way to protect citizens' First Amendment right to receive information from diverse sources."[42] CME's comments include only general references to the desirability of maintaining diversity of ownership to ensure "the public's access to diverse sources of information."[43] IFPA attempts to dismiss the constitutional implications of the rule entirely with its offhand observation that "[d]aily newspaper publishers have plenty of opportunities to exercise their free speech within their own newspapers."[44]

As NAA demonstrated in its Petition for Rulemaking and in its opening comments, speculative and unproven assumptions about diversity in ownership can no longer suffice to justify an across-the-board prohibition on newspaper participation in the local broadcasting business. The assumed problem the rule was intended to address does not exist, and the ban cannot be shown to be necessary or appropriate to achieve any demonstrable public interest need.[45] Further, the scarcity rationale that underlay the Supreme Court's approval of the rules

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[42] Id. at 2.

[43] CME Comments at 2. CME also broadly asserts that "strict ownership limits" are necessary to "ensure that minorities and women are not completely squeezed out of broadcast ownership." Id. at 10. As CME acknowledges, however, and as the Commission long has recognized, the principal obstacle facing minority and female entrepreneurs is limited access to capital, and not the absence of available properties. Id. at 11. Neither CME nor any other party has offered any evidence to suggest that allowing local newspaper/broadcast combinations would have any appreciable impact on ownership opportunities for women or minorities.

[44] IFPA Comments at 3.

[45] See NAA Comments at 55-58, 86-88; Cox/Media General Comments at 9-12; Tribune Comments at 60-64. Indeed, the Commission never has demonstrated the existence of any clear nexus between ownership diversity and content diversity. As NAA, Tribune, and others have shown, the Commission's appropriate focus in this proceeding is on diversity in

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twenty years ago has been widely discredited and, indeed, rejected by the Commission itself. The comments of NAA, NAB, and other parties unquestionably demonstrate that the modern information marketplace is highly diverse and intensely competitive, and that the workings of that marketplace provide ample assurance that a broad range of viewpoints will be heard not only on national and international affairs, but on any topic of local or regional concern as well.

In these circumstances, it is clear that the scarcity rationale is a relic of a bygone era, and cannot be relied upon by the Commission to support retention of the newspaper/broadcast ban. Absent a foundation in a viable scarcity rationale, moreover, the rule clearly cannot withstand First Amendment scrutiny. The effective functioning of the marketplace ensures diversity and competition, eliminating any need for governmental intrusion. Even if there were any demonstrable problem to address, it could not be shown that an absolute ban on newspaper participation in broadcasting is the necessary or appropriate solution. Without a clear and persuasive demonstration of a nexus between separate ownership and diverse programming offerings -- a nexus that never has been shown to exist -- the categorical and discriminatory exclusion of one group of potential station owners cannot be justified.[46]

(...Continued)
programming. NAA Comments at 55-65; Tribune Comments at 52-54. Historically, the Commission has viewed mandating separate ownership of media properties as a means of achieving the objective of programming diversity, and not as an independent goal in and of itself. More recent Commission decisions, however, as well as the vast preponderance of the record evidence in this proceeding, reflect a recognition that joint ownership can and does foster diverse program offerings.

[46] See NAA Comments at 104-07.

IV. CONCLUSION

The evidence has been submitted and the verdict is obvious: the newspaper/broadcast cross-ownership prohibition is not "necessary in the public interest." Accordingly, NAA submits, the Commission must promptly initiate a rulemaking proceeding to repeal the anachronistic newspaper/broadcast cross-ownership rule in its entirety.

Respectfully submitted,

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